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No. 83-1710

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

PATRICK COUSSENS and MARY COUSSENS,
Petitioners,

vs.

CARPENTERS DISTRICT COUNCIL OF DETROIT, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Respondents, being dissatisfied with petitioners' statement of the questions presented for review, hereby submit that the following are the questions before this Court:

I

Was a default judgment properly entered against parties (petitioners) who, at every stage of the proceedings, deliberately and willfully disregarded their obligations and disobeyed court orders and who ultimately left the State of Michigan without leaving any forwarding address, thus making it virtually impossible (for them) to receive notice of court orders?

II

Did the District Court err in refusing to set aside a default judgment under the circumstances described above and where the motion was made four years after entry of the judgment and (had the motion been granted) the harm resulting to respondents (plaintiffs in the District Court) would have been irreparable?

III

Did the District Court have jurisdiction to order that garnishment funds ("owned" by petitioners) in the possession of the District Court's Clerk be turned over to respondents in partial satisfaction of respondents' judgment?

LIST OF PARTIES

Petitioners

1. Patrick Coussens.
2. Mary Coussens.

Respondents

1. The Carpenters District Council of Detroit, Wayne, Oakland and Macomb Counties and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, a labor organization.

2. Detroit Carpenters Fringe Benefit Funds, a trust fund established under, and administered pursuant to, the Labor-Management Relations Act of 1947, as amended, and the Employee Retirement Income Security Act of 1974, as amended.

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Statement of the Case

Were there any similarity between the "facts" as set out in the petition for writ of certiorari and the actual facts, the petitioners, Patrick and Mary Coussens, might very well be entitled to at least some relief. However, as the Court of Appeals' recitation of the facts abundantly demonstrates, there is not even a remote similarity. Even a most cursory summary of the history of this litigation during the eight years it had been pending in the District Court will demonstrate beyond any doubt a consistent pattern by the petitioners, Patrick and Mary Coussens, of deliberately and willfully disregarding their obligations in virtually every aspect of the case since its inception.

Traig Roofing, Inc.,[1] *a Michigan corporation solely owned by Patrick and Mary Coussens,* the petitioners in this proceeding, had a contract with the Carpenters' District Council of Detroit, Wayne, Oakland and Macomb Counties and Vicinity, United Brotherhood of Carpenters and Jointers of America, AFL-CIO,[2] pursuant to which it was obligated to pay stated wages to, and to make contributions for fringe benefits (e.g., pension, vacation and holiday and insurance [health and welfare] benefits) for, those of its employees who were represented by the Union. The wages were of course paid directly to the employees. Under the contract, the fringe benefit contributions were to be paid to the Detroit Carpenters Fringe Benefit Funds.[3]

Traig violated the contract and, in late 1973, suit was instituted against it by both the Union and the Fund, the respondents herein.[4]

In May 1976, two judgements were entered against Traig. The first, in favor of the Union, was for $44,820.25, representing the indebtedness for wages for the period 1971 through 1973, plus prejudgment interest. The second, in favor of the Fund, was in the amount of $25,725.30, representing Traig's indebtedness for fringe benefit contributions (including contractual late payment charges) for the same period of time, plus prejudgment interest and costs.

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[1] Hereinafter, "Traig", not to be confused with Traig Roofing and Sheet Metal, Inc., another corporation owned by the Coussens. Patrick Coussens was president of Traig and Mary Coussens, his wife, was the secretary and treasurer.

[2] A labor organization representing employees in an industry affecting commerce, hereinafter to be referred to as the "Union".

[3] A trust fund established under, and administered pursuant to, Section 302 of the Labor-Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C.A. §186, and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C.A. §§1001, *et seq.,* hereinafter to be referred to as the "Fund."

[4] Except where the context requires otherwise, the two respondents will hereinafter be collectively referred to as the "Carpenters".

1. **Events Leading Up to the Judgment Against Traig Roofing, Inc., and Pertaining to the Appeal from that Judgment.**

In May 1974, several months after the lawsuit was instituted, the Carpenters served interrogatories on Traig. In September, the Carpenters filed a motion for summary judgment alleging that the answers to the interrogatories (signed by one of the petitioners, Patrick Coussens, Traig's president) were "sham". Before the motion could be heard, Traig's first attorney, Kenneth Rancilio, filed a motion to withdraw as its counsel stating that Traig and its president had failed to respond to his letters or communications and that they were otherwise "very uncooperative". Mr. Rancilio's motion was granted in January 1975.

In May 1975, after Traig's new counsel had entered the case, District Judge Cornelia G. Kennedy found that Traig's answers to the Carpenters' interrogatories were "sham" and ordered Traig to submit amended answers. (See Order Conditionally Denying Plaintiffs' Motion for Summary Judgment Without Prejudice, dated July 15, 1975).

Seven and one-half months later, the amended answers were filed. Alleging that the amended answers were also "sham and fraud", the Carpenters filed a second motion for summary judgment, which was heard by Judge Kennedy on April 19, 1976. She found that the amended answers were also evasive and granted relief under Federal Rule of Civil Procedure 37(b). (See Order Entering Default of Principal Defendant, dated April 20, 1976). On May 21, 1976, following an evidentiary hearing, Judge Kennedy entered judgments against Traig in the amount of $70,545.55 plus costs.

Traig then again obtained new counsel, Gelman & Hand, P.C., and, in August 1976, that lawfirm, following issuance of a Rule 54(b) Certificate,[5] perfected an appeal to the Court of

[5] Federal Rule of Civil Procedure 54(b).

Appeals for the Sixth Circuit from the judgments entered against Traig by Judge Kennedy. (C.A. 6, #77-1274). On December 8, 1976, Gelman & Hand, P.C., filed a motion to withdraw as counsel alleging that Traig "has deliberately disregarded an agreement to petitioner to pay expenses and attorney fees now due and owing in the above matter." On December 27, 1976, Judge Kennedy issued an order permitting Gelman & Hand to withdraw. Six months later, in June 1977, Traig's August 1976 appeal was dismissed for lack of progress by the Court of Appeals.

2. **The Proceedings Against the Coussens.**

On May 19, 1977, Writs of Garnishment[6] were issued against both Patrick Coussens, Mary Coussens and Traig Roofing & Sheet Metal, Inc., another corporation which the Coussens had set up. The purpose of these Writs was, of course, to inquire into the Coussens' relationship and dealings with Traig. On May 24, 1977, garnishee disclosures were filed on behalf of these three garnishee defendants[7] by attorney Irving A. August. The disclosures for the Coussens denied any indebtedness to Traig, the principal defendant.

The Carpenters elected to challenge the disclosures and, on May 26, 1977, pursuant to G.C.R. 1963, 738.9, a Notice of Depositions of garnishee defendants Patrick and Mary Cous-

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[6] The garnishment proceedings were instituted pursuant to Michigan General Court Rule 738 of 1963. (These Michigan court rules will hereinafter be referred to as "G.C.R. 1963".) G.C.R. 1963, 738, as well as all Michigan "proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution" were applicable to this proceeding by virtue of Federal Rule of Civil Procedure 69.

[7] In their brief to the Court of Appeals (pp. 12-13), the Coussens argued that they were not "parties" to the proceeding in the District Court and, consequently, the action taken in that court (e.g., entering a judgment against them) was improper. The Court of Appeals rejected this argument as "without merit" (see pp. A-29 through A-31 of the Appendix to the petition for writ of certiorari) and the Coussens have not renewed this argument before this Court. In view of this, it is difficult to comprehend how the Coussens can now claim (at pp. 11 and 59 of their petition) that they "were not subject to the jurisdiction of the [District] Court."

sens was served by mail upon attorney Irving August. The depositions were scheduled for July 1, 1977. On June 1, 1977, Mr. August sent the Carpenters' attorneys a letter stating:

> "I am in receipt of the Notice of Taking Depositions of Patrick Coussens, Mary Coussens, and Traig Roofing and Sheet Metal, Inc., garnishee defendants. Please be advised that as of this date I have not been retained by the garnishee defendants. *Although the Disclosure was upon my stationery, Mr. and Mrs. Coussens at this point choose to represent themselves.* I would suggest you serve Mr. and Mrs. Coussens with a copy of the Motion." (Emphasis added.)

In an affidavit dated September 1, 1981, filed with the District Court, attorney August more fully explained his relationship with the Coussens in connection with the garnishment proceedings and the Coussens' decision to represent themselves therein. He stated:

> "4. Notwithstanding the fact that I represented Mary and Patrick Coussens in other matters, I was never retained to represent them in the above-captioned case. As can be clearly demonstrated from an examination of the court files, I never filed an Appearance on their behalf. My sole involvement with this case was that the Disclosure Statements were printed upon my stationery, which I prepared pursuant to their instructions.
>
> * * *
>
> "7. I advised Patrick Coussens that if I filed an appearance in the above-reference case, the effect of that would be that service upon myself of any pleadings, motions, or orders would constitute notice to themselves and be binding upon them. He indicated that they did not desire this consequence and therefore instructed me not to file an Appearance in this case."

Upon receipt of attorney August's letter of June 1, 1977, counsel for the Carpenters, on June 2, 1977, served a copy of the Notice of Taking Depositions on Patrick and Mary Coussens by mailing a copy of the Notice, postage prepaid, to the Coussens at their home address at 8300 Pacton, Utica, Michi-

gan. (Proof of Service dated June 2, 1977.) The envelope containing the Notice was not returned to counsel and, although the Coussens did not move from Michigan until June 17, 1977,[8] they failed to appear for their depositions on July 1, 1977. There is no evidence, aside from the self-serving affidavit of Patrick Coussens[9] that the Coussens did not receive the deposition notice.

On or about July 13, 1977, counsel for the Carpenters filed an Ex Parte Motion for Order Compelling Taking of Depositions and Default Judgment with supporting affidavit and brief. In the affidavit, the Carpenters' attorney, Coleman E. Klein, recited his efforts to serve the Coussens with the deposition notice and their failure to attend.

> "6. That on June 2, 1977 all of the garnishee defendants were served by mail addressed to their last known address with copies of the aforesaid Notice of Taking Depositions, as more fully appears in the Proof of Service previously filed in this cause.
>
> "7. That on June 23, 1977 affiant attempted to telephone all of the garnishee defendants to confirm their attendance at the aforesaid scheduled deposition but was advised by the Michigan Bell Telephone Company that all of the garnishee defendants' business and residence telephone service had been permanently disconnected without forwarding number; that on June 23, 1977 affiant telephoned the aforesaid Irving A. August, Esq. who advised affiant that he did not represent any of the garnishee defendants and that he believed that garnishee defendant Traig Roofing & Sheet Metal, Inc.

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[8]Transcript of Deposition of Mary Coussens, p. 3 (August 28, 1981). Mrs. Coussens also testified at her August 1981 deposition that no forwarding address was left with the post office. (*Id.*, p. 4.) According to attorney August's affidavit, the Coussens did not tell him where they were moving to in Texas "or supply me with an address." (Affidavit of Irving A. August, ¶6 (September 1, 1981).) See also Brief in Support of Defendants Coussens Motion to Set Aside Default Judgment, pp. 1-2. (September 1, 1981).

[9]Supporting Affidavit of Patrick Coussens attached to Motion to Set Aside Default Judgment (August 26, 1981).

was insolvent and had terminated business in the State of Michigan, and that garnishee defendants Patrick Coussens and Mary Coussens had permanently left the State of Michigan, that they now resided in the State of Texas and that he did not believe that they would attend the scheduled July 1, 1977 depositions.

"8. That none of the garnishee defendants attended the depositions on July 1, 1977 as required, and have not communicated in any manner with Plaintiffs' attorneys concerning their absence or intentions respecting said depositions or otherwise."

On September 26, 1977, Judge Kennedy issued an Opinion and Order Granting Motion to Compel Taking of Deposition. On September 27, 1977, Judge Kennedy entered an Order Compelling Taking of Depositions ordering the Coussens to appear for depositions on October 11, 1977. The final two paragraphs of Judge Kennedy's Order stated:

"IT IS FURTHER ORDERED that default judgment be entered against those Garnishee Defendants aforesaid who shall fail to appear and be so deposed as hereinabove ordered;

"IT IS FURTHER ORDERED that a copy of this Order be served upon all of the aforesaid Garnishee Defendants by certified mail addressed to their respective last known addresses forthwith."

On September 27, 1977, true copies of the Order were mailed, certified mail return receipt requested, to the Coussens at their last known address at 8300 Pacton, Utica, Michigan. Though not required, a copy of the Order was also sent by first class mail to attorney Irving August (Proof of Service dated September 27, 1977). On October 3, 1977, the envelopes containing the copies of the Order mailed to the Coussens were returned to the Carpenters' attorneys stamped "MOVED, LEFT NO ADDRESS". (Plaintiffs' Answer and Brief in Opposition to Motion to Set Aside Default Judgment, p. 7 (September 3, 1981).)

The Coussens did not appear for their court ordered deposi-

tions on October 11, 1977. On October 12, 1977, the Carpenters filed an Ex-Parte Motion for Default Judgment with supporting affidavit setting forth all of the above facts. Copies of the motion, affidavit and brief were mailed to the Coussens at their last known address and to attorney Irving August. On the same day, Judge Kennedy entered an Order for Default Judgment against Patrick Coussens, Mary Coussens and Traig Roofing & Sheet Metal, Inc. in the total amount of $70,545.55 plus costs. In the introduction portion of the Order, Judge Kennedy stated,

> ". . . it appearing to the Court that proper service of this Court's Order of September 27, 1977 by certified mail was attempted by plaintiffs as provided in the aforesaid Order, that Patrick Coussens, Mary Coussens and Traig Roofing & Sheet Metal, Inc. failed to appear and be deposed on October 11, 1977 as directed in the aforesaid Order, *that plaintiffs have exhausted all reasonable means of proceeding against said Patrick Coussens, Mary Coussens and Traig Roofing & Sheet Metal, Inc.,*" (emphasis added).

Over three years later, in May 1981, the Carpenters located funds of the Coussens on deposit with the Katy National Bank, Katy, Texas. On May 26, 1981, a Writ of Garnishment was issued by the Clerk of the District Court directed to the bank. Subsequently, the bank was served and, on July 3, 1981, it filed a disclosure stating that it was indebted to the Coussens in the amount of $15,688.15. The Coussens admit that they were notified by the bank that it had been served with the writ. (See paragraph 3 of the Supporting Affidavit of Patrick Coussens attached to the Coussens' Motion to Set Aside Default Judgment.)[10]

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[10] In view of this admission, and the facts hereinafter set out in the text, the intimation by the Coussens (at p. 42 of their petition) that they did not have timely knowledge of service of the writ upon the bank or an opportunity to take timely action to protect their interests is simply not true. The same is true about any claim that they were deprived of their property without any hearing.

Two months after issuance of the writ, on or about July 23, 1981, the bank filed a Motion for Payment of Monies Pursuant to Disclosure of Defendant Garnishee Katy National Bank and Issuance of Receipt in Discharge of Liability. Along with the motion and the proposed order and receipt, a $15,688.15 cashier's check, payable to the Clerk of the District Court was tendered to the Clerk. Significantly, counsel for the bank's cover letter of July 21, 1981, to the Clerk of the District Court enclosing the motion and related documents indicates that copies were mailed to attorney Thomas A. Adams, the present attorney for the Coussens. (See Plaintiffs' Brief in Support of Motion for Payment of Monies Pursuant to Disclosure of Defendant Garnishee Katy National Bank, pages 2-3 (September 3, 1981), and Plaintiffs' Petition for Release and Payment of Garnishment Funds ¶5 (August 3, 1981).)

At about the same time that the bank filed its motion and tendered its check, the Carpenters filed a motion requesting the Court to direct the Clerk to turn over the $15,688.15 to them. The Coussens, through attorney Adams, in addition to opposing both the bank's and the Carpenter's motions, filed a motion to set aside the default judgment entered against them. All of the motions were heard by District Judge Horace Gilmore on August 27 and September 4, 1981. *No evidence was offered by the Coussens at the hearing.* At the conclusion of the hearing on September 4, 1981, Judge Gilmore denied the Coussens' Motion to Set Aside the Default Judgment and ordered that the $15,688.15 be turned over to plaintiffs. Judge Gilmore stated in his opinion from the bench:

> "[I] don't think there is anything in this record that will compel me to set aside Judge Kennedy's judgment. I think it was properly entered. I think there is no question that the Coussens received, and I find as a fact based upon what I have before me, that the Coussens did receive the notice [of taking deposition] in June 1977. I think the Coussens willfully avoided attending that first deposition. I think there is no basis for this

Court, four years later, to say that Judge Kennedy erred in granting the default judgment. She made her findings, she had the entire matter before her, and I think the entry of that default judgment was perfectly justified. So I think we have a valid default judgment in the amount of 70 some thousand dollars.

"Now with reference to this $15,688.15 paid into court by the Garnishee-Defendant Katy National Bank, it is the contention of the Defendant that if I find the default judgment was valid, that I still should not order the turning over of the money because Defendant says the Court has no jurisdiction over the Katy National Bank and that this Court's writs cannot run to the Katy National Bank, which is located in Texas, outside the jurisdiction of the Eastern District of Michigan. That may very well be true, and I am not going to argue or say that it isn't, but I think it is academic. I think it is not relevant. The reason I think it is not relevant is that although the Katy National Bank might very well have resisted the writ of garnishment from this Court and might very well have resisted the sending of money in, they did not do so. The money is now here. They have subjected themselves to the jurisdiction of the Court by sending the money in." (Transcript of Proceedings of September 4, 1981, pp. 4-5.)

On May 26, 1983, the Sixth Circuit affirmed. On January 18, 1984, it denied rehearing.

Summary of Argument

1. A default judgment was properly entered by the U.S. District Court for the Eastern District of Michigan against parties (residents of Michigan) who, at every stage of the proceedings, refused to obey court orders and who, during the course of the proceedings, left the State of Michigan without leaving any forwarding address.

2. A motion to set aside default judgment was properly denied, where the judgment was entered under the circumstances described above, where the motion was not filed until almost four years after the judgment was entered and where it

was filed solely because the prevailing parties in the District Court (respondents) were able — for the first time since its entry — to obtain (partial) enforcement.

3. Assuming the petitioners have standing to assert the defense, there can be no question but that the U.S. District Court for the Eastern District of Michigan had the authority to order that funds "owned" by the judgment debtors (the petitioners) and transmitted to the Clerk of the District Court by a bank located in the State of Texas, as the result of a writ of garnishment served upon the bank by judgment creditors (respondents), be turned over to the judgment creditors, where the bank was subject to the jurisdiction of the District Court (either by express terms of the applicable statute and/or by consent) and voluntarily transmitted the funds.

Reasons for Denying the Writ

I

A DEFAULT JUDGMENT WAS PROPERLY ENTERED AGAINST PARTIES (THE COUSSENS) WHO, AT EVERY STAGE OF THE PROCEEDINGS, DELIBERATELY AND WILLFULLY DISREGARDED THEIR OBLIGATIONS AND DISOBEYED COURT ORDERS AND WHO ULTIMATELY LEFT THE STATE OF MICHIGAN WITHOUT LEAVING ANY FORWARDING ADDRESS, THUS MAKING IT VIRTUALLY IMPOSSIBLE (FOR THEM) TO RECEIVE NOTICE OF COURT ORDERS.

II

THE DISTRICT COURT DID NOT ERR IN REFUSING TO SET ASIDE A DEFAULT JUDGMENT ENTERED UNDER THE CIRCUMSTANCES DESCRIBED ABOVE AND WHERE THE MOTION WAS MADE FOUR YEARS AFTER ENTRY OF THE JUDGMENT AND, HAD THE MOTION BEEN GRANTED, THE HARM RESULTING TO PLAINTIFFS WOULD HAVE BEEN IRREPARABLE.

The two interrelated issues were dealt with extensively in the Court of Appeals' decision. What was said there need not be reiterated herein.

All of the Coussens' rights were fastidiously protected by the District Court. They received all process due them, and more. The evidence is clear that the Coussens deliberately sought to evade their obligations as garnishee defendants. They deliberately chose to represent themselves in the garnishment proceeding so as not to be bound by notices that would otherwise be sent to an attorney. They moved from the State without notifying the Carpenters or the court and left no forwarding address for mail with the Post Office or with the attorney they had retained to file the disclosures. By their deliberate actions, the Coussens made it virtually impossible to receive actual notice of the order compelling their depositions. Both the Carpenters and Judge Kennedy acted in full compliance with applicable court rules and it is unconscionable for the Coussens now to protest the natural consequences of their deliberate attempt to evade their legal obligations. Their situation is no different from that of a litigant who chooses to represent himself but then moves without notifying the opposing party of a change of address for service of pleadings or notices.[11] Such a litigant cannot deprive his opponent of discovery and other rights by later protesting that he failed to receive appropriate notices. As Judge Gilmore noted in his opinion denying their motion to set aside the default judgment, "the Coussens willfully avoided attending that first deposition". The situation was even more egregious than that stated by Judge Gilmore because of the Coussens' consistent and deliberate disregard of their obligations during the entire course of this case.

The Coussens claim that, even if they were derelict in connection with their responsibilities, a less drastic sanction then

[11] See second sentence of Federal Rule of Civil Procedure 5(b) and G.C.R. 1963, 107.3.

a default judgment should have been imposed. In this case, however, there was no less drastic sanction which could have effectively been imposed. As Judge Kennedy noted in her October 12, 1977, Order for Default Judgment against Patrick Coussens, Mary Coussens and Traig Roofing & Sheet Metal, Inc., "the plaintiffs have exhausted all reasonable means of proceeding against said Patrick Coussens, Mary Coussens and Traig Roofing & Sheet Metal, Inc." Since by deliberately failing to furnish depositions and moving out of the State without leaving a forwarding address, the Coussens had thwarted the Carpenters' case, default judgment was the only effective remedy available to the Carpenters and one clearly within the discretion of the district judge to award.

The Coussens also claim that it was improper for the Court to have entered the default judgment against them because a three day notice requirement had not been given to them. Even assuming there is such a requirement in this type of matter, as the Court of Appeals noted, there was more than full compliance. Judge Kennedy's September 27, 1977, Order Compelling Taking of Depositions specifically stated that, if the Coussens did not appear on October 11, 1977, judgments by default would be entered against them. Service of the Order was effectuated on September 27. The Order for Default Judgment Against Patrick Coussens, Mary Coussens and Traig Roofing & Sheet Metal, Inc., was not entered until October 12, 1977. Thus, the Coussens had fifteen days notice, twelve more days that they claim they were entitled to.

Finally, the Coussens state that even if the default judgment was properly entered against them in 1977, the Court nevertheless erred when, four years later, it denied their motion to set aside the default judgment. In support of that argument, they cite numerous cases.

None of the cases relied upon by the Coussens have any applicability to this matter. In each of the cases relied upon, the worst that can be said about the moving party was that

either he or his attorney had engaged in excusable neglect. In this case, however, there was flagrant intentional misconduct and, as Judge Gilmore stated, "the entry of that default judgment was perfectly justified." See *National Hockey League* v *Metropolitan Hockey Club, Inc.,* 427 U.S. 639, 96 S. Ct. 2778, 49 L.Ed.2d 747 (1976); see also 4A *Moore's Federal Practice* ¶37.03[2] (2d ed., 1983).

Additionally, and of equal importance, in the cases relied upon by the Coussens, the plaintiffs suffered no prejudice other than the mere passage of time involving brief periods compared to the four years that elapsed in the instant matter. In this case, however, the Carpenters would have been severely prejudiced if the judgment against the Coussens had been set aside. The purpose of the 1977 garnishment proceedings was to inquire into the relationship between Traig, the then principal defendant, and its owners, the Coussens, and the related corporation owned by the Coussens, Traig Roofing & Sheet Metal, Inc. By disappearing from sight, the Coussens made it impossible to inquire into the relationship and, obviously, it would also have been impossible to meaningfully reconstruct the situation four years after the Coussens had abandoned their two corporations.[12]

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[12] In their petition (pp. 38-39), the Coussens state that they were defaulted for failure to attend and give testimony at a deposition, such opportunity for deposition was given to plaintiffs when the Coussens' *voluntarily* submitted to a creditors' examination and, at that examination, "no evidence was developed to contradict their garnishee disclosure statements" that they were not indebted to the principal defendant and they would therefore have a meritorious defense to the Garnishment." Virtually everything stated by the Coussens in this connection is untrue. First, they did not voluntarily submit to anything. After the Coussens were located in Texas, the Carpenters instituted proceedings supplementary to judgment pursuant to Chapter 61 of the Revised Judicature Act of Michigan, M.C.L.A. §§600.6101, *et seq.* (M.S.A. §§27A.6101, *et seq.*) On June 8, 1981, Judge Gilmore issued an Order Granting Petition to Institute Proceedings Supplementary to Judgment directing the Coussens to appear for judgment creditors' examination on August 20, 1981. Not only does the file indicate that the U.S. Marshal's Service served copies of that Order upon the Coussens on June 18, but, in their Supplemental Reply to Motion for Payment of

III
THE DISTRICT COURT HAD THE AUTHORITY TO ENTER THE ORDER FOR RELEASE AND PAYMENT OF GARNISHMENT FUNDS.

Even if it is true that the District Court would have lacked authority to require the Katy National Bank to file a garnishee disclosure or to turn over the garnished funds,[13] this is totally irrelevant because, as noted by both the District Court and the Court of Appeals, the bank submitted to personal jurisdiction when it filed disclosures and transmitted the money to the District Court. Contrary to what the Coussens assert, this case does not involve any question of subject matter jurisdiction, and the Court of Appeals so held. Once the bank had submitted itself to the jurisdiction of the District Court, the latter

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Monies Pursuant to Disclosurse of Defendant Garnishee Katy National Bank, etc. (dated September 1, 1981, at page 2), they admitted to having been served with copies of the Order. (The Coussens do not, and they cannot, challenge the validity of, or the authority of the District Court to enter the Order.) At the request of their present counsel, Thomas A. Adams, III, the discovery examinations were adjourned from August 27, 1981. One of the purposes of the Order Granting Petition to Institute Proceedings Supplementary to Judgment, as a reading of it and the supporting petition makes abundantly clear, was to inquire into the Coussens' financial circumstances (so that the judgments against them could be collected) and not to inquire into the relationships between them and the corporations they owned, including Traig. It was too late in the day to make the latter inquiry. Consequently, their statement to this Court that at the August 27 examination no evidence was developed to contradict their [1977 garnishee] disclosures that they were not indebted to Traig is totally misleading.

[13] We do not concede that the District Court lacked any such authority. It is clear from a reading of Section 4011 of Michigan's Revised Judicature Act, M.C.L.A. §600.4011 (M.S.A. §27A.4011), that the Legislature intended to give the state (Michigan) courts the maximum jurisdiction possible in garnishment proceedings which, as is the situation in this case, are ancillary to the principal claims. Obviously in cases brought in state courts, there are geographic limitations to a state court's *in personam* jurisdiction. In the type of case involved before this Court, there are no such geographic limitations. See L.M.R.A. §301(c), 29 U.S.C.A. §185(c), and ERISA §502(e)(2), 29 U.S.C.A. §1132(e)(2). See also *Textile Workers Union of America* v *Lincoln Mills of Alabama*, 353 U.S. 448, 77 S. Ct. 912, 1 L.Ed.2d 972 (1957).

could if it deemed turn over to be appropriate, as it did, order that the funds be given to the Carpenters.

It should also be noted that, in the context of this case, the whole argument about the validity of the garnishment proceedings is beside the point. In his Order Granting Petition to Institute Proceedings Supplementary to Judgment, etc., (dated June 5, 1981), served on the Coussens on June 18, 1981, Judge Gilmore restrained and enjoined the Coussens from transferring or otherwise disposing of any of their property "whether now owned by or hereinafter acquired by or becoming due to [them]." The injunctive provision in the Order was issued pursuant to Section 6104 of Michigan's Revised Judicature Act, M.C.L.A. §600.6104 (M.S.A. §27A.6104) and no question can[14] or has been raised regarding the validity of the Order. Under the same statutory provision, the District Court would have had the authority to issue a further mandatory injunction specifically ordering the Coussens to pay over the funds held in deposit for them by the Katy National Bank in partial satisfaction of the Judgment. Had they refused to comply with such mandatory injunction, the District Court could have appointed a receiver to accomplish the turn-over.

Accordingly, even if the Court had found something improper regarding the garnishment proceedings, it would have made no practical sense to dismiss the garnishment and order the funds returned to the Katy National Bank. However, had the District Court ordered the return of the funds to Texas, the only thing accomplished by this would have been to give the Coussens an opportunity to get control over the funds in violation of the Court's injunctive provision.

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[14] See note 7, *supra*.

Conclusion

The Coussens have nothing to complain about. All of their rights were carefully protected. They engaged in a consistent pattern of evasion and blatant disregard of their obligations during the entire course of the litigation. Their conduct demonstrates not only contempt for other persons but contemp for the judicial process.

For reasons heretofore stated, the decision of the Court of appeals was entirely correct and the petition for writ of certiorari should be denied.

Respectfully submitted,

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